

EXHIBIT 4



National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

April 17, 2019

Timothy C. Klenk
428 Royal Bonnet Court
Fort Myers, FL 33908

Re: Freedom of Information Act (FOIA)
Appeal No. FOIA- 2019-00008-A
Request No. FOIA-2018-00338

Dear Mr. Klenk:

The agency is in receipt of your letter, dated February 21, 2019, in which you state that you are appealing the agency's response to FOIA Request No. FOIA-2018-00338 for certain records related to National Transportation Safety Board (NTSB) accident number DCA96MA070. Specifically, you sought: 1) test results of noise on the cockpit voice recorder; 2) satellite pictures of the aircraft; and 3) contents of the flight data recorder. The FOIA Office informed you that you may access publicly-available records pertaining to the accident in the NTSB public docket and in response to item 1, it withheld draft correspondence, and preliminary and analytical data that reflected the agency's deliberative process under FOIA Exemption 5. The FOIA Office further informed you that it did not locate any records responsive to item 2 and that records responsive to item 3 can no longer be made available due to changes in technology. In your letter, you ask questions regarding the FOIA Office's initial response to items 1 and 3¹, but you provide no basis for appealing the FOIA Office's decision. Because your letter is not a proper appeal of the agency's response to your request for records, but seeks answers to questions, I must deny your appeal.

The FOIA does not require agencies to answer questions. The FOIA limits requests to agency records and a proper FOIA request is one that reasonably describes the records sought. "The rationale for this rule is that FOIA was not intended to reduce government agencies to full time investigators on behalf of requesters," or to allow requesters to conduct "fishing expeditions" through agency files.² When determining the scope of a FOIA request, courts have generally held that agencies are not required to answer questions posed as FOIA requests.³

¹ In your letter, you state that you are not appealing the agency's response to item 2.

² *Assassination Archives & Research Ctr. v. CIA*, 720 F.Supp. 217 (D.D.C. 1989). See also *Frank v. Dep't of Justice*, 941 F.Supp. 4 (D.D.C. 1996) (agency not required to "dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff's questions"); *Blakey v. Dep't of Justice*, 549 F.Supp. 362 (D.D.C. 1982) (FOIA "not intended to compel agencies to become ad hoc investigators for requesters whose requests are not compatible with their own information retrieval systems").

³ See, e.g., *Ivey v. U.S. Office of Special Counsel*, No. 05-0176, 2005 U.S. Dist. LEXIS 18874 (D.D.C. Aug. 31, 2005) (agency not required to answer questions in response to request seeking reasons for closure of agency

To the extent that you seek additional records regarding accident number DCA96MA070, the FOIA and NTSB regulations require you to submit a FOIA request describing the records that you seek. 5 U.S.C. § 552(a)(3)(A) (FOIA requests must (1) "reasonably describe" the records sought, and (2) be made in accordance with the agency's published FOIA regulations); 49 C.F.R. § 801.10(d)(1) (all FOIA requests "must reasonably identify the record requested").

This constitutes the NTSB's final action on your appeal. Pursuant to 5 U.S.C. § 552(a)(4)(B), my decision is reviewable in the district court of the United States where you reside, where you have your principal place of business, where records are located, or in the District of Columbia.

Sincerely,


Sharon W. Bryson
Managing Director

investigation). See also *Jean-Pierre v. Fed. Bureau of Prisons*, 880 F. Supp. 2d 95 (D.D.C. 2012) ("Thus, '[t]o the extent that [a] plaintiff's FOIA requests [a]re questions or requests for explanations of policies or procedures, the[y] are not proper FOIA requests.'" (quoting *Thomas v. Comptroller of Currency*, 684 F. Supp. 2d 29, 33 (D.D.C. 2010))); *Astley v. Lawson*, Civil Action No. 89-2806, 1991 U.S. Dist. LEXIS 21611 (D.D.C. Jan. 11, 1991) (FOIA does not compel an agency to reply to questions disguised as FOIA requests).